

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**D.R. 5 of 2024
The State of West Bengal
Vs.
Promothesh Ghosal
With
C.R.A. (DB)/71/2025**

**Promothesh Ghosal
Vs.
The State of West Bengal & Ors.**

For the Appellant : Mr. Soumajit Das Mahapatra
Ms. Sonali Das
Mr. Dipankar Saha

For the State : Mr. Debasish Roy, Ld. P.P.
Mr. Anand Keshari
Ms. Snigdha Saha

Heard & Judgment on : July 14, 2025

DEBANGSU BASAK, J.:-

1. Death reference and the appeal are taken up for analogous hearing as they emanate out of the same impugned judgment of conviction and order of sentence passed by the learned Additional Sessions Judge, 1st Court, Hooghly in Sessions Trial No. 27(8) 2022 arising

out of Sessions Case No. 89 of 2022 convicting the convict under Section 302 of the Indian Penal Code, 1860 and sentencing the convict to death.

2. Learned advocate appearing for the convict draws the attention of the Court to the FIR as also the inquest report. He submits that the inquest report does not speak of any of the so-called extra judicial confession being made although one of the witnesses to the inquest claimed that the convict made such extra judicial confession as the prosecution witness.
3. Learned advocate appearing for the convict refers to the evidence of the prosecution witnesses and submits that the so-called extra judicial confessions cannot be relied upon. Moreover, he refers to the evidence of the prosecution witnesses and submits that the place of occurrence was such that it was open to other persons to enter and exit the place of occurrence. He refers to the sketch map which was marked as exhibit at the trial. He submits that such sketch map itself will show that persons other than the convict could enter and exit the place of occurrence.
4. Learned advocate appearing for the convict submits that the place of occurrence was not adequately drawn up in accordance with the provisions of law. Moreover, referring to the sketch map itself, he submits that relevant witnesses who were present to the place of

occurrence were not examined although prosecution relied upon evidence of a person who was residing across the road.

5. Learned advocate appearing for the convict submits that the so-called offending weapons were not recovered or seized pursuant to the statements recorded under Section 27 of the Evidence Act.
6. Learned advocate appearing for the convict refers to the statements made by some of the prosecution witnesses under Section 164 of the Cr.P.C. and submits that there are contradictions between the contents of those statements recorded under Section 164 of the Cr.P.C. and the testimony at the trial.
7. Learned advocate appearing for the convict submits that a doctor and a nurse being over jealous claimed that the convict made extra judicial confessions. However, the injury report of the convict does not speak of any extra judicial confessions being made.
8. Learned advocate appearing for the convict draws the attention of the Court to the testimonies of various prosecution witnesses including that of the Investigating Officer and submits that the prosecution failed to establish any of the charges beyond reasonable doubt.
9. Learned Public Prosecution appearing for the State submits that the convict was found at the place of occurrence in a bleeding condition along with the three dead bodies. Relationship between the persons murdered and the convict is that of parents and

siblings. Convict was found with the dead bodies of his parents along with the married sister at their residence. Convict himself was found in an injured condition.

10. Learned Public Prosecution submits that it is for the convict to explain his conduct under Section 106 of the Evidence Act. He draws the attention of the Court to the statements of the convict recorded under Section 313 of the Cr.P.C. and submits that the convict did not offer any explanation as also to the three murders taking place.
11. Learned Public Prosecutor appearing for the State submits that the convict made extra judicial confessions made to several persons who corroborated each other at the trial. Taking that into consideration, and the fact that the convict failed to discharge his onus under the prosecution was able to establish beyond reasonable doubt that the convict committed the murder.
12. Learned Public Prosecutor appearing for the State in response to a query of the Court submits that there is no material on record to suggest that the convict is beyond reformation. He refers to the age of the convict and the fact that there is no criminal antecedent so far as the convict is concerned. He also submits that the post conduct of the convict at the correctional home does not suggest that the convict is beyond reformation. According to him, although

triple murder is involved, the same cannot be classified as the rarest of the rare case.

13. Police registered an FIR on the basis of the written complaint lodged by the prosecution witness (P.W. 1) on November 9, 2021. Police commenced investigations and on conclusion of the same submitted a charge sheet as against the convict. Charges under Section 302 of the IPC were framed as against the convict.
14. Convict was charged with murdering the three victims at their residence on the night of November 8, 2021.
15. In order to establish the charge of murder as against the convict, prosecution examined 14 witnesses at the trial and relied upon various documentary material exhibits. At the conclusion of the evidence of the prosecution, the accused was examined under Section 313 of the Cr.P.C. The convict declined to adduce any defence witness at the trial.
16. Convict stood trial for the murder of his parents and his married sister. Murder took place at the residence of the family of the convict. In other words, the parents of the convict, his married sister resided at the residence of the convict at the time when the murder took place.
17. Post mortem reports of the three persons murdered being exhibits 17, 18 and 19 read with deposition of the post mortem doctor

being P.W. 13 established that all the three persons were murdered.

18. P.W. 1 is a relative of the murdered persons as well of the convict. He stated in his evidence that the next door neighbour informed him that his relatives were murdered by the convict. Hearing such news, he along with his father reached the place of occurrence. He entered the place of occurrence and found the three murdered persons lying in a pool of blood and also saw the convict with bleeding injuries. He stated that the victims along with the convict were taken to the hospital where the victims were declared dead by the doctor.
19. P.W. 1 stated in his evidence in chief that on asking the convict told him that on the previous night there was a verbal altercation between his parents and sister and getting angry over the matter, he assaulted and injured them with a wooden door bar on their heads and at the same time cut their necks and veins of their hands with a shaving blade. Convict told him that he did so as to ensure the death of the victims.
20. P.W. 1 was cross-examined when he stated that the convict used to take care of his parents including their day-to-day needs and medication. He also stated that the entire surrounding wall of the residence was in a dilapidated condition. In cross-examination,

he stated that when the convict confessed as to the crime, several persons were inside and outside the house.

21. A neighbour of the victims and the convict deposed as P.W. 2. The house of P.W. 2 is across the road of the house of the victim and the convict. He stated that when he woke up in the morning on November 9, 2021 at about 7.00 a.m., he and the local neighbours were calling the victims and the convict from outside of their residence when nobody was responding. As nobody was responding, he crossed the pucca boundary fencing by scaling it and went to the backside of the house and saw the convict sitting at the staircase with bleeding injuries. He asked the convict for the keys of the house so that the main door can be opened, whereupon the convict told him that the keys of the house were on the top of the refrigerator. He went in for collecting the keys and saw that the parents of the convict were lying on the floor of the house in severe bleeding condition and the sister of the convict on the bed also in severe bleeding condition. Seeing all the victims bleeding profusely, he asked the convict as to how it happened whereupon the convict told him that in the previous night at about 8-30/9-00 p.m., he first assaulted and badly injured all three victims with wooden door bar and then to ensure the death, he also assaulted and injured all three with blade on the veins of their hands and at

- their throats. He recorded a statement under Section 164 of the Cr.P.C., which was tendered as evidence and marked as exhibit 8.
22. P.W. 2 was cross-examined at length. In cross-examination, he stated that he cannot say about the matrimonial life of the married sister of the convict. However, husband of such married sister used to come sometime to the paternal residence of such married sister. It also came out in the cross-examination that the convict was a private tutor who used to render tuition to the students.
23. P.W. 3 is a local resident of the place of occurrence. He stated that on November 9, 2021 at about 7-00 a.m. in the morning, he heard hue and cries in front of the residence of the victims and the convict. Hearing the same, he rushed there. On reaching there, he found the main door of the residence to be open. He went inside and saw the convict sitting at the staircase in bleeding condition. He also saw the parents of the convict lying on the floor in bleeding condition in their bed room and the married sister lying in bleeding condition on the bed. He is a seizure list witness. He was cross-examined at length by the defence. In cross-examination, he stated that the convict told him that on the previous night the convict assaulted and injured the heads of his parents and sister with the wooden door bar and slit their throats with blade.

24. A student of convict deposed as P.W.4. He stated that, on November 8, 2021 he took tuition from convict till 8:30 p.m. He stated that, there were other students in such evening session. They came out of the house around 8:15 p.m. He also stated that, on November 8, 2021, when he left the house, parents of the convict were at the house.
25. P.W.4 was cross-examined at length by the defence without any substantive material being garnered from such cross-examination, favouring the defence. P.W.4 stated that, he became aware of the murder from P.W.2.
26. P.W.5 is another student who took tuition from the convict. He stated that, he took such tuition in the morning and that, on November 8, 2021 he last took tuition from the convict in the morning. P.W.5 also stated that, he came to know of the murder from P.W.2.
27. P.W.6 is the Doctor who examined the convict on November 9, 2021 at about 8:40 a.m. He narrated the nature of injuries found on the convict. He stated that, the injuries found on the convict were self inflicted injuries and were made in an attempt to commit suicide. He stated that, at the time of examination of convict at the hospital, he was assisted by P.W.7 who was the hospital staff nurse on emergency duty.

28. P.W.6 stated in his examination-in-chief that, when he asked the convict as to why he attempted to commit suicide on November 8, 2021 at about 8:30 a.m, since his prognosis was good, convict stated to P.W.6 firstly, he badly injured his parents and sister with a wooden door bar and thereafter slit their throats and veins of their hands. Injury report of convict was tendered in evidence by P.W.6 and marked as Exhibits.9 and 10.
29. P.W.7 is a hospital staff nurse who assisted P.W.6 while convict was being examined on November 9, 2021. She stated that, the convict came to the hospital with self inflicted injuries on both his hands just below his wrists. She stated that when P.W.6 asked the convict as to how the convict received such injuries then the convict told P.W.6 in her presence that, on the previous night on November 8, 2021 convict self inflicted injuries on himself and that, on such night, he first inflicted injuries on the head of both the parents and his married sister with a wooden door bar and thereafter to ensure their death, he slit their throats and cut their veins of their hands. She identified the convict in Court.
30. P.W.8 is a local resident. He stated that, he met the convict on November 8, 2021 in the evening and that, the convict talked with him in the normal way. He is a seizure list witness. He identified the wooden door bar which was seized by the police as also six unused blades. In cross-examination, he stated that, there was no

gate excepting pillars and that access inside by any person was possible. He also stated that, the convict was a private tutor of Mathematics subject and that, convict used to give tuition till 8:30 to 9 p.m. He also stated that, convict earned reputation as private tutor of Mathematics and the family of the convict used to maintain good relation with the local inhabitants.

31. P.W.9 is the owner of the property in which, the victims were found dead. Apparently, the victims were residing at the place of occurrence as tenants under P.W.9. P.W.9 stated that, he came to know about the incident on November 9, 2021. He is a seizure list witness who tendered the seizure list in evidence as also rent receipts. In cross-examination, P.W.9, stated that, there was an arch gate and the same was always open and no provision for a gate.
32. P.W.10, is the childhood friend of the convict. P.W.10 identified the convict in the Court. He stated that, convict was a private tutor by profession. He stated that, convict used to reside with his parents and that the married sister used to come and stay with them occasionally. He stated that, he entered the residence of the convict and saw the convict sitting on the stairs and his parents were lying on the floor with pool of blood. Sister of the victim was lying on the bed in a pool of blood. He stated that, he asked the convict as to how the incident happened when, the convict told P.W.10 that,

convict assaulted his parents and sister with a wooden door bar and then to ensure their death he slit their throats and vein with blade. P.W.10 stated that he saw the convict with bleeding injuries. He asked the convict as to how such injuries happened, the convict told him that, the convict also wanted to kill himself. Convict also told him that, the convict committed the incident of murder of parents and sister in the night on November 8, 2021. In cross-examination, nothing fruitful for the defence came out from the cross-examination of P.W.10.

33. P.W.11 is a police personnel who identified the seizure list and the articles seized.
34. P.W.12 is a Sub-Inspector of Police who is also a seizure list witness.
35. P.W.13 is a Doctor, who conducted the Post Mortem on the three victims. In his evidence, P.W.13 tendered the Post Mortem Reports which were marked as Exhibits. 17, 18 and 19. He stated that, the deaths were due to the effect of the intra cranial haemorrhage and haemorrhagic shocks and neurogenic shocks caused by the ante mortem injuries. He was shown the wooden door bar weapon when he stated that, the injuries would be inflicted by such an item. The opinion of the Post Mortem Doctor was not dislodged despite cross-examination.

36. P.W.14 is the Investigating Officer, who described the course of investigation. He tendered various documents which were marked as exhibits at the trial. He was cross-examined at length by the defence. In cross-examination, he stated that, he did not examine some of the neighbours. He also stated that, he drew the sketch map. He stated the he did not take any photography or video photography of the place of occurrence but took photographs of the dead bodies. He also stated that, he did not collect fingerprints or footprints at the place of occurrence.
37. On completion of the evidence of the prosecution, the convict was examined under Section 313 of the Criminal Procedure Code. In such cross-examination, the evidence of the prosecution witnesses was placed to him. In response, he stated that, he did not know anything and that he was innocent.
38. In his examination under Section 313 of the Criminal Procedure Code, the convict did not attempt to explain the injuries that he suffered. He did not claim that he was not at the place of occurrence. He also did not deny the evidence of extra judicial confession as recorded at the trial.
39. Several prosecution witnesses namely, P.W.1, P.W.2, P.W.3, P.W.6, P.W.7 and P.W.10 stated that, the convict made extra judicial confession as to the three murders. All extra judicial confessions as narrated by such prosecution witnesses corroborate each other.

There is no iota of contradictions between the extra judicial confessions which, the prosecution witnesses narrated in their respective testimonies.

40. The convict at the relevant point of time confessed to P.W.1, P.W.2, P.W.3, P.W.6, P.W.7 and P.W.10 that, he used the wooden door bar which was tendered in evidence and marked as Material Exhibit to injure the three victims. Thereafter, he used blades to slit the throats and veins of the victims to ensure their death. Deposition of the Post Mortem Doctor and the injuries noted in Post Mortem Report being Exhibits.17, 18 and 19 corroborate the extra judicial confessions made by the convict.
41. There is an issue of Section 106 of the Evidence Act also. Prosecution was able to place the convict at the place of occurrence and at the time of occurrence. Convict was rescued from the place of occurrence with bleeding injuries alongwith the three victims. All four were taken to a hospital where, the three victims were pronounced as brought dead. Convict was treated at the hospital. As noted above, convict made extra judicial confession to doctor and nurse treating him. Such doctor and nurse deposed as P.W.7 and P.W.8 respectively at the trial.
42. It is contended on behalf of the defence that, the injury reports being Exhibits.9 and 10 and the treatment sheet of the convict

being Exhibit 10 did not bear the so-called extra judicial confession allegedly made by the convict to P.W.7 and P.W.8.

43. We are unable to accept such contention in view of the fact that, the doctor and the nurse testified at the trial that, the convict made such extra judicial confession while the convict was being treated at the hospital. The narration of the incident by doctor and the nurse with regard to the nature of the crime committed by the convict, as told by the convict to them corroborate the version of the other prosecution witnesses before whom the convict made the extra judicial confession. Convict, in his statement recorded under Section 313 of the Criminal Procedure Code did not deny that, he made such extra judicial confession to P.W.7 and P.W.8.
44. Convict failed to explain the circumstances, under which, he received the injuries, which were self inflicted as noted by the doctor examining him, in his statement recorded under Section 313 of the Criminal Procedure Code. Convict failed to discharge the onus under Section 106 of the Evidence Act so far as the crime is concerned and his role with regard thereto.
45. In our view, the prosecution was able to establish overwhelmingly and beyond reasonable doubt the involvement of the convict in murdering his parents and his sister on November 8, 2021. We find no ground to interfere with the conviction of the convict under Section 302 of the Indian Penal Code, 1860.

46. In terms of the pronouncement of the Hon'ble Supreme Court in **(2023) 2 SCC 353 (Manoj & Ors. Vs. State of Madhya Pradesh)**, we are required to find out whether, the convict is beyond reformation, amongst others in order to confirm the sentence of death penalty.
47. We find from the impugned judgment of conviction that, the learned Trial Judge did enter into an elaborate discussion with regard to the crime test and criminal test. Learned Trial Judge, however, did not find any acceptable mitigating factor on record and that, the mitigating factors appeared to be miniscule and negligible before the aggravating factors, to him. Learned Trial Judge, however, held that, entire occurrence resulting in the murder of the victims will fall within the rarest of rare category and therefore, proceeded to impose the death penalty.
48. With respect, psychological evaluation report as submitted by the State, pursuant to our order does not establish that the convict is beyond reformation. Moreover, there are no criminal antecedents so far as the convict is concerned. No material is placed before us to conclude that no other sentence than death penalty stand foreclosed.
49. Age of the convict also is a factor which is required to be taken into consideration. When he deposed under Section 313 of the Criminal

Procedure Code he recorded an age of 44 years. The incident therefore occurred when he was 41 years of age.

50. It came out from the evidence of the prosecution witnesses that, the convict generated a reputation at the locale as a competent private tutor for Mathematics. It is also claimed that numerous students used to take private tuition from the convict at his residence.
51. Since, we are unable to arrive at a finding that, the convict is beyond reformation and that, taking into consideration the age of the convict as also the fact that, there are no criminal antecedents so far convict is concerned, we are not in a position to arrive at a finding that, all other penalties apart from death penalty stand foreclosed so far the convict is concerned. In such circumstances, we deem it appropriate to commute the death penalty to one of life imprisonment.
52. A copy of this judgment alongwith the Trial Court Records be remitted to the appropriate Court forthwith. In view of the communication of the death penalty of Promothesh Ghoshal, any warrant issued by the appropriate Court with regard thereto in respect of Promothesh Ghoshal stands modified in terms of this judgment and order. Department will inform the Correctional Home, where Promothesh Ghoshal is lodged, as to this judgment and order. The Correctional Home will record the fact of

commutation of death penalty to the sentence awarded by this judgment and order in respect of Promothesh Ghoshal, in their records.

53. Period of detention already undergone by the appellant shall be set off against the substantive punishment in terms of the provisions contained in Section 428 of the Code of Criminal Procedure.
54. **DR 5 of 2024** alongwith **CRA (DB) 71 of 2025** stand **disposed of** accordingly.
55. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

(Debangsu Basak, J.)

56. I agree.

(Md. Shabbar Rashidi, J.)

SD/CHC